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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,271	04/04/2001	Marc W. Retter	210121.462C6	4618

500 7590 06/01/2004

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EXAMINER
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FETTEROLF, BRANDON J

ART UNIT	PAPER NUMBER
1642	

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/827,271	RETTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brandon J Fetterolf, PhD	1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02/03/2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
  - 4a) Of the above claim(s) 1-5,7-9 and 11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 6 and 10 is/are rejected.
- 7) Claim(s) 6 and 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 April 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/17/2003.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

Art Unit: 1642

Retter *et al.*

Priority date : 07/17/2000

## DETAILED ACTION

The response filed on February 3, 2004 to the restriction requirement of October 3, 2003 has been received. Applicant has elected Group V, drawn to an isolated antibody specific for the ovarian cancer antigen O8E, and compositions thereof, which encompasses claims 6 and 10 and SEQ ID 392. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP 818.03(a)).

Claims 1-11 are pending.

Claims 1-5, 7-9, and 11 are withdrawn from further consideration by the examiner under 37 CFR 1.142(b) as being drawn to non-elected inventions.

Thus, claims 6 and 10 are pending and are currently under examination.

### *Priority*

A review of the parent applications for the disclosure of SEQ ID NO:392 lends support for an earlier filing date of **July 17, 2000** for claims 6 and 10 in application number 09/827,271. Furthermore, although SEQ ID No. 392 was disclosed in an earlier application 09/404,879, continuity was broken and the examiner can not give the applicant priority of the earlier filing date under 37 U.S.C. 120.

### *Claim Objections*

Claims 6 and 10 are objected to because of the following informalities: The claims refer to non-elected subject matter. Claim 6 refers to claim 1 and Claim 10 refers to a polypeptide and a fusion protein. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 6 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Baker *et al.* (WO 99/63088; December 9, 1999).

Baker *et al.* teach an isolated peptide which is approximately 90.1% identical to SEQ ID NO:392(see attached Sequence Listing at the end of this action). The patent also teach antibodies specific for the disclosed polypeptides of interest (Page 90, line 28+). Baker *et al.* further teach a composition comprising a physiologically acceptable carrier and an antibody (Page 90, line 33+).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Mitcham *et al.* (US Patent No. 6,468,546 B1; September 24, 1999).

Mitcham *et al.* teach an isolated peptides comprising SEQ ID NO: 392 (see attached Sequence Listing at the end of this action). The patent also teach antibodies specific for the disclosed polypeptides of interest (Column 14, line 18+). Mitcham *et al.* further teach compositions comprising physiologically acceptable carriers and immunostimulants (Column 18, line 34+).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

No claims are allowable.

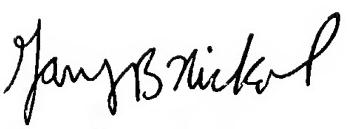
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon J Fetterolf, PhD whose telephone number is (571)-272-2919. The examiner can normally be reached Monday through Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571)-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brandon J Fetterolf, PhD  
Examiner  
Art Unit 1642

BF



**GARY NICKOL**  
**PRIMARY EXAMINER**